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SIPDIS

STATE FOR EAP/MLS, EB, AND EB/ESC/IEC/ENR
STATE PLEASE PASS TO USTR
COMMERCE FOR JEAN KELLY
ENERGY FOR IN AND PI
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TREASURY FOR OASIA

E.O. 12958: N/A

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SUBJECT: THAILAND: COURT SUSPENDS PRIVATIZATION OF
STATE-OWNED POWER PRODUCER EGAT

REF: A. 04 BANGKOK 1504

[1B](#). BANGKOK 6761

¶11. (U) SUMMARY: Thailand's Supreme Administrative Court has ordered the Minister of Energy and EGAT Plc to suspend the initial public offering (IPO) of shares of the state-owned power producer's stock scheduled for November 16-17, 2005. The Court's decision represents an unexpected victory for the Confederation of Consumer Organizations (COO) and other civic groups currently protesting the privatization of EGAT on the grounds that the two royal decrees facilitating the corporatization of the public utility are against the law and counter to the public interest. The time-frame for the suspension remains undetermined, and investors have expressed disappointment at the delay of the largest share issuance of a state enterprise to date. The resulting uncertainty sends a negative but accurate message about the potential risks of investing in Thailand. While this outcome stands as an example of how the Royal Thai Government's rushed implementation of basic economic policy can turn out badly, the suspension also gives the RTG a second chance to get its privatization policy right. END SUMMARY

¶12. (U) THE PETITION: The Supreme Administrative Court's decision arises from the petition of the COO, led by Rossana Tositrakul and ten other petitioners. The petition against the Prime Minister, the Prime Minister's Office, the Energy Minister, the Energy Ministry, and the Cabinet alleges damage as a result of two royal decrees of 2005 that facilitated the corporatization of the state-owned Energy Generating Authority of Thailand, which filed for company registration as EGAT Plc in June 2005, and the transfer of state assets to EGAT Plc. All shares in EGAT Plc are still held by the RTG. The petition alleges that the two royal decrees were against the law because they were issued without public hearings required by Article 19 (9) of the Corporatization Act of 1999, and that their transfer of state-owned property to EGAT Plc is against the public interest, particularly the right to receive public services from the state. The petitioners asked the Court to suspend enforcement of the two royal decrees and to suspend EGAT Plc's share listing and IPO, scheduled for November 16-17, 2005.

¶13. (U) THE DECISION: After considering the matter inconclusively for weeks, the Supreme Administrative Court was forced to act in view of the November 16 IPO date. Without making a determination on the legality of the two decrees in question, the Court ordered the suspension of the IPO on the grounds that, if the Court finds for the petitioners on the issue of the two decrees after shares have been sold, there would be extensive damage to a large number of buyers of EGAT shares as well as the authorities concerned. The Court dismissed the request to suspend enforcement of the two royal decrees, because doing so would cause problems for the operations of EGAT Plc. While the Court emphasized in its announcement that there should not be any effect on investors, confidence from its ordering the suspension of the IPO, it has not specified a time frame for its decision on the two royal decrees in question.

¶14. (U) PUBLIC PROTEST: The daily front-page newspaper coverage of the court case in recent days highlights the extent to which protest against EGAT privatization has suddenly become a highly visible point of contention between a wide range of civic groups and the government of Prime Minister Thaksin Shinawatra. On November 15, representatives from the Confederation of Consumer Organizations of Thailand and other groups gathered in front of the U.S. Embassy and presented a letter to the Ambassador warning foreign investors of their opposition to the sale of EGAT shares. Econoff accepted the letter on behalf of the Ambassador. Groups represented included: People Living with HIV & AIDS, Thailand Four Regions Slum Network, Alternative Agricultural Network, FTA Watch, and Alternative Energy Project for Sustainability. These and other groups have conducted regular demonstrations at EGAT and elsewhere. A major rally is planned at Sanam Luang this week. While the opposition

Democrat Party has been silent on the matter until this month, Democrat leader Abhisit Vejjajiva has joined the fray, promising to renationalize EGAT if the IPO goes through.

15. (U) CONCERNS AT ISSUE: The basic reason why EGAT privatization is controversial with the Thai public is that it is expected to result in higher electric power rates. The RTG has long intervened in one way or another to subsidize electricity rates. The dramatic rise in world fuel prices in recent months has in fact raised the cost of such intervention to the point it is untenable, and one of the stated aims of privatization is to put electric power pricing on a sustainable foundation at market-clearing rates. The Thailand Four Regions Slum Dwellers Network, for example, counters that slum dwellers would be severely hit by price increases. The civic groups, arguments in court and in their public appeals generally anchor their position on EGAT in a blanket opposition to privatization. For example, according to Somsak Kosaisuk, advisor to the State Enterprises Relations Confederation, "People are now aware that its (EGAT's) listing is tantamount to selling off the nation's property."

16. (U) FOCUS ON THE GOVERNMENT: The public discussion has also highlighted aspects of EGAT privatization that are of concern to Thais who, in principle, support privatization as national policy. These include the RTG's failure to pass a basic energy law establishing a National Energy Commission to serve as an independent regulator and the lack of transparency in policy-making on the matter to date. Finance Minister Thanong Bidaya immediately reaffirmed that privatization remains a key plank in the Thaksin government's economic policy, which seeks to raise the efficiency of state enterprises. If the court sees the laws as unsuitable, he said, we will amend the laws. Energy Minister Viset Choopiban commented to similar effect, and continued his insistence that the IPO process was proper under the law.

17. (U) INVESTOR REACTION: Investors have expressed their disappointment over the suspension, as the IPO has been a much-anticipated event for several weeks. The concern is not only about the prospects for a future EGAT IPO, but the impact the suspension will have on investment in other state enterprises about to float shares. Praphad Phodhivorakun, Chairman of the Federation of Thai Industries expects a significant short-term impact on Thai capital markets as foreign investors will likely be reluctant to invest in Thai stocks. Embassy contacts have emphasized that the suspension heightens uncertainty about the EGAT IPO and the market generally, but they do not expect the Stock Exchange of Thailand index to fall dramatically going forward. At mid-day November 16, the SET index stood at 676.05 points, down by 5.53 points, with the trading value of 5,445.68 million baht. According to news reports, Worapak Tanyawong, Managing Director of JP Morgan, EGAT's financial consultant, said the immediate loss is about US\$ 1 billion, which is the cost of pre-subscription from foreign investors. The planned road show in New York, Boston, and San Francisco has been postponed. Of the 26,000 EGAT employees who planned to buy shares, those who borrowed money also stand to lose money as their interest payments come due in December.

18. (U) A SECOND CHANCE TO GET IT RIGHT?: The reaction of industry experts to the whole question of the EGAT IPO since its initial failure in March 2004 (see REF A) suggests that despite being a temporary setback, it does provide a second chance. Industry insiders such as Piayavasti Amranand have sharply criticized the government's lack of transparency, and the absence of more competition in the RTG's plans to date (REF B). Pointing to prior privatizations, they have highlighted the failure to improve efficiency or end monopoly control of the market. Even the EGAT IPO that has been suspended would have left the government the majority shareholder. The same experts and even many supporters of privatization generally have also criticized the government for not making the case for privatization more forthrightly, so as to address the concerns raised by the civic groups rather than stipulating the argument that state management of the power grid is inherently superior to private administration. After hearing of the suspension, Mr. Piayavasti said that the government should use the opportunity to go back and do what it should have done before, namely pass a basic energy law and set up an independent regulator.

19. (U) COMMENT: While we do not share the petitioners, blanket opposition to EGAT privatization, we think that the controversy has focused public attention on real weaknesses in the RTG's privatization policy, particularly the lack of transparency in policy-making, the failure to establish an industry regulator, a lack of clarity regarding the price-setting mechanism, and the expected persistence of EGAT's monopoly control. The failure to launch an EGAT IPO represents a setback for the Prime Minister, and we expect that the attendant uncertainty will result in a short-term

decline in investor confidence as investors see clearly the risks of investing in Thailand. By demonstrating visibly how the Thaksin government's rushed implementation of basic policy can turn out badly, it also reaffirms our long-standing concerns about the Thaksin government's ability to manage many large-scale endeavors simultaneously such as the proposed mega-projects. Longer-term, we think that if the suspension forces the RTG to address legitimate concerns by enacting a basic energy law and setting up an independent regulator, the result will be to put EGAT privatization on a much firmer foundation.

BOYCE